IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 6253 OF 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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ATMARAM VARVAJI THAKORE - Petitioner(s)
Versus
STATE OF GUJARAT & ORS. - Respondent(s)

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Appearance :
Shri Dhirendra Mehta for Petitioner(s).
Shri Satyam Chhaya, AGP for Respondent Nos. 1-4.
Shri Prathmesh D. Dave for Respondent No.2.
None for Respondent No.3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 10/05/2007

ORAL JUDGMENT

Shri Dhirendra Mehta, learned Counsel for the petitioner,

submits that the petitioner had made an application under Section 70(b) of the Bombay Tenancy & Agricultural Lands Act, 1948 (“the Act” for short) for declaration of his status as a tenant. The application was to be enquired into by the concerned Mamlatdar; the case was taken up on 17th December, 1988 for recording the evidence of the parties; before the Advocate of the applicant could reach the Mamlatdar's Court, he proceeded with the inquiry and examined before him Bhagubhai, son of Varvaji Vaghela, Mangaji son of Kachrabhai Prajapati, Manuji son of Bhavanji Vaghela and Vithhalbhai son of Maganlal Suthar, all witnesses for the defendant before 1:30 p.m. and, after arrival of the Counsel for the petitioner, he examined the petitioner-Atmaram. The Counsel made an application on 17th December, 1988 that as he could not remain in attendance at the time of examination-in-chief of the defence witnesses, the witnesses be produced for cross examination. According to Shri Mehta, no orders on the application were made, the final order was passed on 5th January, 1989. His submission is that in every case, the applicant or the plaintiff would be entitled to open the case and after his statements are recorded, the other party would be asked to enter the witness box. He submits that the statement of Bhagubhai, Mangaji, Manuji and Vithhalbhai are available in the file of the Mamlatdar at Page Nos.125, 133, 135 and 137, while the statement of the petitioner is at Page No.141, which would clearly show that four witnesses of the other side were examined before the petitioner could open his case. He submits that the procedure adopted by the Mamlatdar is unheard of and is patently contrary to law. He also submits that if on the date of the statements, the application for production of the witnesses for cross examination was filed, then, the witnesses should have been produced for cross examination or in any case, the authority was required to pass an order on the said application.

2. Shri Satyam Chhaya, learned Counsel for the respondent-State, submits that there was nothing wrong in the procedure adopted by the Mamlatdar and non-consideration of the application dated 17th December, 1988, asking for production of the witnesses for cross examination, would not make any difference in the matter.

3. The burden to prove a particular fact is on a party, who alleges the fact. A party who appears before the Court and if the burden is upon him, then, he is required to open the case. In the present matter, contrary to the provisions of law, even before the examination of the petitioner Atmaram and his witnesses, the Mamlatdar started recording the evidence of the other side. Assuming to avoid delay and save the time, he could examine those witnesses, then, at least after examination of the petitioner-Atmaram, he was required to call the said witnesses for their cross examination. On one side, the procedure adopted by the Mamlatdar was illegal and at the same time, he perpetuated the illegality by not summoning the witnesses for their cross examination.

4. Taking into consideration the totality of the circumstances, I set aside the order passed on 5th January, 1989 by the Mamlatdar, appellate order passed by the Deputy Collector on 22nd February, 1990 and the order passed in revision by the Gujarat Revenue Tribunal on 27th June, 1995.

5. The application dated 17th December, 1988 submitted by the present petitioner is allowed. The Mamlatdar is hereby directed to summon the said witnesses and provide an appropriate opportunity to the petitioner to cross examine those four witnesses.

6. Along with a copy of this order, the present petitioner shall appear before the Mamlatdar on 25th June, 2007, enabling the Mamlatdar to know as to what he is required to do. After receiving the application, the Mamlatdar shall issue Notice to respondent Nos.2 and 3 and after serving notice upon them, would ask them to produce the said witnesses for cross examination and in case the non-applicants, present respondent Nos.2 and 3, do not appear, then, the Mamlatdar shall issue notice to the witnesses for their cross examination. In case, despite service of summons, the witnesses do not appear before the Mamlatdar, then, the Mamlatdar shall ignore such statements, which are still uncross-examined. After giving appropriate opportunity of hearing to the parties, the Mamlatdar shall pass a speaking order in accordance with law.

7. The petition stands allowed. Rule is made absolute. No costs.

[R.S.Garg, J.]

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